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University of Maryland at College Park

Center Office: IRIS Center, 2105 Morrill Hall, College Park, MD 20742
Telephone (301) 405-3 110 • Fax (301) 405-3020
E-mail: info@iris.econ.umd.edu
World Wide Web: http://www.umd.edu

Forms of Enterprise in Kazakhstan

Thomas O'Brien
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Author: Thomas O'Brien, IRIS Almaty, Commercial Law Project.

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Thomas O'Brien
Senior Counsel
IRIS Almaty
Commercial Law Project
funded by USAID

Privately owned and operated businesses, both large and small, are the driving forces that produce the goods and provide the services that are consumed in an economy. The current forms of business organizations in Kazakstan are primarily the result of the last 75 years of its political history under communism and the chaotic economic and legal transformation that followed the collapse of the Soviet Union.

In Communist times, there was essentially just one form of business organization, the state enterprise. In the transitional economics of the former communist states. the primary initial element of economic transformation has been the mass privatization of state enterprises into private business entities. But the privatization process was just the first step in a long and complex process of legal reform and development that is still unfolding. The goal of privatization is hopefully not just to transfer the ownership of these former state enterprises, but to create efficient, well managed, privately owned and governed business enterprises. Privatization will not have been successful unless there is a transparent and level legal regime for business formation **and** operations and the rights of the shareholders and other investors are well protected and enforceable.

The continuing development of the laws dealing with the formation and operation of business enterprises, often called company law, is necessarily a key element in the success of these recently formed entities and the continued development of a market economy.

The current company law in Kazakstan is of very recent origin. In the late 1 980's, the steady decline and then quick collapse of the command economy and communist system of state ownership and management, were accompanied by the introduction of new forms of business organizations previously unknown under Soviet law. The law on business organizations in Kazakstan. like the other business and commercial laws elsewhere in the former Soviet republics, is only in its preliminary stages of development. The extant forms of business

structures that currently exist in Kazakstan arc a combination of Sovicr business structures formed under percstroi ka and recognizable modern business forms.

In Kazakstan the Government announced, in its 1996 legislative plan, thc intention to re-write thc main business organization laws. It is for this reason that an analysis of the legal history behind the current forms of Kazak business organizations, the present shortcomings. and suggested improvements are of interest. Thc purpose of this paper is to provide a perspective on the historical development of current business organization laws in Kazakstan, examine and comparc in general terms the Kazak Company Law and thcn to provide somc rccornrncndations for their improvement and continued and dcvclopmcnt in Kazakstan.

Historical Roots of Kazak Business Forms

In Soviet times, different forms of business organizations were of little relevance as thc state basically owned and controlled all factories and other business entcrpriscs. Under Soviet law there was on thc whole only onc form of business organization, the "state cntcrprisc" which conducted almost all economic activity. Because of thc Soviet State ownership ofthc means of production, other forms of business organizations and ownership simply did not exist. Thc onc notable variant was thc Foreign Trade Organization, a state cntcrprisc conducting international trade activities.

Thc first comprehensive Soviet Law dealing with business organizations was thc "USSR Statute on Socialist State Production Enterprises" confirmed by a dccrcc of thc Council of Ministers ofthc USSR in 1965.

Thcrc was onc other significant and earlier Soviet law of rclcvancc to the development of business organization law. Thc concept of a simple partnership did cxist under Soviet Law. This relationship was introduced under the concept of "joint economic activity" (*sovmestnaya devatelnost)* via contract in 1961 by thc "Fundamental Principals of Civil Legislation of thc USSR and Union Republics". Such a contract for joint economic activity was originally intended to be used only between state cntcrpriscs as other business forms did not exist at that time.

Twenty years later, the process of perestroika resulted in the introduction of somc real changes to thc legal framework of business organizations. Thc first development was in 1987 and the goal was to stimulate thc economic activity of Soviet state cnterprises by allowing foreign investment. This was accomplished by means of Dccrec 49 of the Council of Ministers

of the USSR "On the Procedure for the Creation on the Territory of the USSR and the Activities of Joint Enterprises with the Participation of Soviet Organizations and Firms of Capitalist and Developing Countries." Decree 49 enabled foreigners for the first time to participate in a Soviet business entity that had a separate legal identity - tho joint venture enterprise. Such a business entcrprisc, with foreign ownership and management participation, was a separate and distinct form of business entity.

This decree contained a detailed and formal preformation joint venture approval process that required the prospective participants to submit a comprehensive economic and financial feasibility study as well as a draft of the proposed foundation documents (contract and charter) to either the national or local government registration organs for approval.

Under the USSR joint venture law. a joint venture was recognized as a separate business organization form and a legal entity separate and distinct from its participants. The liability of all participants, including the foreign investor, was limited to its contribution to the capital fund. The joint venture organizational agreement was the operational and internal governing law of the entcrprisc to the extent it was not contrary to public policy or in conflict with law. The participants could also define both the forms in which they made their contributions to the capital fund and the percentage participation. All contributions had to be valued in Russian rubles. If provided for in the organizational documents the joint venture could may establish subsidiaries. branch, or representation offices inside or outside the Russian Federation.

There were initially many restrictions on foreign involvetnent and participation in the opera. Initially the tnajority of the joint venture's employees had to be Soviet citizens and the Chairman of the Board and General Director had to be a Soviet citizens. Foreign investment participation was limited at first to a maximum of 49% of the capital fund. These restrictions were reduced and by October 1990 the edict "On Foreign Investments in the USSR" permitted the creation of an enterprises in which the foreign investment was 100%.

The first real non-state owned and wholly domestic entcrprisc in the CSSR was created in 1988 by the "Law on Coopcrativcs in the USSR". This legislation permitted Soviet citizens to engage in certain defined economic activity through the creation of a separate juridical person not owned by the state but closely regulated by it.

Two other Soviet laws, both adopted during the twilight of'thc USSR in 1990, obviously had considerable influence on the development of the Kazak business organization

law. These are the “Law on Enterprises in the USSR”, and the “Statute on Joint-Stock Societies and Limited Responsibility Societies,” confirmed by a decree 590 of June 19, 1990. The USSR Law on Enterprises was the first Soviet law to try and regulate both the state enterprises and other, privately owned forms of business organizations. It provided for three basic forms of business organization based on ownership distinctions: the “ownership by Soviet citizens” (individual or family enterprises), “collective ownership” (collective enterprises, cooperatives, joint-stock societies and partnerships, social and religious organizations) and “state ownership” (state enterprises and municipal entities).

Two subsequent Soviet Laws also contributed to the development of the current business organization laws in Kazakstan. These are the 1990 Decree “On Measures Regarding the Creation and Development of Small Enterprises” and the 199 1 “Law on General Principles of Entrepreneurship of Citizens in the USSR”. On 3 1 of May, 199 l, the Basis of Civil Legislation of the USSR and Union Republics was adopted. This Basis of Civil Legislation provided the possibility of the establishment of a general partnership, limited partnership and partnership of additional liability, apart from the joint-stock company and partnership of limited liability.

Almost immediately thereafter, Kazakstan enacted on June 2 1, 199 1, the Kazak SSR Law “On Business Partnerships and Joint-Stock Companies” which was the first Kazak generated law of significance in the area of private business formation and operation. Its principal distinction from the previous legislation consisted of a recognition of a joint-stock company as a business association or partnership and of existence of a general section in the law of Kazakstan that covered all the types of partnerships.

Kazak Civil Code

The adoption of the Kazakstan Civil Code General Part as of December 27, 1994 containing the chapter on “Business partnerships" opened the current stage in legal development. Many provisions of the earlier 199 1 Kazak law were modified in consideration of problems encountered, world practice and further development of market relations in Kazakstan. The development of this Code was realized in contact with Russian and western lawyers and considerable reliance on the Dutch and Russian Civil Codes as the basis. The legislation on partnerships and companies of other countries was also looked at.

The Kazakstan Civil Code regulates commodity-monetary (*tovarno-denezhny)* and other proprietary relations, Article 10 of the Code expressly provides for the protection of the rights of entrepreneurs. Under the Code the State guarantees the freedom of entrepreneurial activity and ensures its protection and support. The rights of entrepreneurs who carry out the activities which arc not prohibited by the legislation shall be protected by atnong other things: the opportunity to carry out entrepreneurial activities without obtaining anyone's, permissions, except for the types of activity which require a license: the simplest procedure for the registration of any types of entrepreneurship in any sphere of the economy by one authority by way of a simple arrival there; by restricting through the legislative acts of the audits which are carried out by the state bodies; and by a compulsory termination of entrepreneurial activities based only upon the decision of a court. Unfortunately the actual practices in Kazakstan fall short of the lofty goals stated in this Article.

Article 12 of the Code defines the concept of a physical person Under a physical person, the term citizen includes citizens of Kazakstan, the citizens of any other country and also stateless persons. The provisions of the Code apply to any physical persons, unless otherwise established by the Code.

Kazak Sole Proprietorship

The fist form of business enterprise mentioned in the Civil Code General Part is the sole proprietorship which is contained in Article 19 entitled "Entrepreneurial Activities of Citizens". A citizen (meaning any physical person as noted above) has the right to engage in entrepreneurial activities without creating a separate legal entity except as provided otherwise in the Code. The right to conduct business arises from the moment of the state registration as an entrepreneur with formation of a legal entity.

The State registration of private entrepreneurs has a simple arrival nature and it shall consist simply in registering as an individual entrepreneur. The citizens who carry out entrepreneurial activities without creation of a legal entity, shall operate on the basis of a purchased patent, obtained from the tax authorities. This patent is in effect a pre-paid tax in a fixed amount, determined by the Ministry of Finance in advance.

The patent system was implemented first by the Edict of the President of April 24. 1995 "On Taxes And Other Obligatory Payments To The Budget," Resolution of the Cabinet of Ministers of the Republic of Kazakstan No. 1 16 of August 16, 1995 was issued under the Edict

and regulates in general the Issuance of patents to individual entrepreneurs engaged in business activity. Thereafter, the Ministry of Finance issued its instruction letter No. 12-8-l -2 on September 5, 1995 providing further detail to the process.

The patent process includes a list of the types of business activity and the required lump sum tax payment. No further tax is to be paid, regardless of the amount of income or profits generated by the individual entrepreneurial activity. Although the advance tax payment is a barrier to business entry for many, the pre-payment of tax in a fixed amount avoids the intrusions and bribe seeking from the tax inspectors.

The patent at the same time operates as the certificate of the state registration of the citizen as entrepreneur and a license which grants the right to carry out the entrepreneurial activities stipulated in the patent. Article 15(2) of the Code appears to provide the basis for the conducting of individual business under an assumed name although the legal regime for sole proprietorship is not developed. The law on Individual Entreprcncurship Without the Formation of a Legal Entity is currently in the early drafting stage and will be considered by the Parliament in late fall of 1996. The rules of the Code which regulate the activities of the commercial legal entities apply to such individual entrepreneurial activities unless otherwise resulting from the terms of the legislation or the essence of the legal relation.

The Code currently provides for four categories of citizens who can conduct such individual entrepreneurial activities without the creation of a legal entity without any state registration: 1) those who are part of a peasant farm; 2) those who carry out one-time work- on the basis of a contract and other agreements; 3) those who cngagc, outside of the normal trade network in selling the assets which belong to them and also products which are manufactured in places which are specifically allocated for those purposes (flea type markets or baraholkas) and through second-hand shops(not defined); and 4) the citizens whose receipts from selling work and services do not exceed 20 minimum wages per annum.

Kazak Forms of Business Legal Entity

Article 33 of the Code defines the concept of a legal entity in Kazakstan. The legal entity shall be recognized as an organization which has in accordance with the right to own, the right of business authority or operational management, its separate assets and which organization is liable with this property in respect of its obligations, which may in its name acquire and exercise proprietary and personal non-property rights and obligations, and be a party in legal

proceedings.. A legal entity must have its independent balance-sheet or budget. The right of business authority or operational management is a carry over from the Soviet state enterprise, in which the State retained ownership but where the right to operational management resided with the State enterprise,

A legal entity may bc a commercial or noncommercial organization. The legal capacity of a legal entity shall arise at the moment of its creation and it shall cease at the moment of the accomplishment of its liquidation. The legal capacity of a legal entity in a sphere of activities which requires a license, shall arise from the moment of obtaining the license and it shall cease at the moment of its revocation, expiration of the term of its validity, or invalidity as provided by the legislative acts.

A legal entity shall carry out its activities on the basis of the charter or a foundation agreement and the Charter or only a foundation agreement unless otherwise provided by legislative acts. The foundation agreement of a legal entity shall be concluded and the Charter approved by its foundation parties. A foundation agreement is not required if the commercial organization is established by one person.

The foundation documents may stipulate the subjects and objectives of the activities. The foundation agreement of the foundation parties determines the procedure for joint activities to create, the conditions of transfer of their assets to its ownership, the operative administration of their assets, and their participation in the enterprise activities.

The charter of a legal entity shall determine the type of the organization, its name, its location, the subject and purposes of activities, the powers of the manager the governing bodies and the supervision bodies, the bounds of their authority, the regime of work, the procedure for the formation of the assets of the organization and the distribution of income, the conditions for reorganization and conditions for the termination of the activities of the organization.

Under the Code, a business partnership is a commercial organization with the charter fund divided into shares (investments) (*dolya)* of the foundation parties (participants) (*uchastnikov).* Business partnerships may be created under the Code and subsequent legislation in the form of the general partnership, limited partnership, limited liability partnership, partnership with additional liability, and joint stock company. Individuals and (or) commercial organizations may be the participants of a general partnership or full partners in a limited partnership. Individuals and legal entities may be the participants of a joint stock

company, limited liability partnership, a partnership with additional liability and investors in a limited partnership, Institutions and state enterprises (see below) may be participants of a business partnership with the consent of the owner of their property.

A business partnership may be the foundation party of other business partnerships except as prohibited by law. Business partnerships except for joint stock companies do not have the right to issue shares. The supreme body of a business partnership shall be the general meeting (meeting of the representatives) of its participants.

THE LAW ON ECONOMIC PARTNERSHIPS

The formation and operation of business enterprises in Kazakstan are also regulated by the Presidential Edict "On Business Partnerships and Joint Stock Companies" (No. 22.55 of May 2, 1995). hereinafter referred to as the Edict. The draft of the Edict had been developed upon the order of the Government of the Republic of Kazakstan with the objective of removal the gaps in the existing legislation and the unification of norms which regulate matters of' establishment and activity of business partnerships.

Under the Edict, an economic partnership is a commercial organization which is a legal entity, with a charter fund made up of the contributions (shares) of the founders (participants). Economic partnerships may be created in the form of a full partnership, a limited (Kommandit) partnership, a limited liability partnership, an additional liability partnership and the joint-stock company of either open or closed type.

Banks, insurance companies, investment companies and investment funds and other similar organizations, the activity of which is based on the attraction of monetary means and other property of persons who are not participants in the partnership, are founded and act in forms of economic partnership, which are defined for these organizations by the special legislative acts governing their activities,

The minimal size of the charter fund, the features of its formation and use, the legal regime of property and restrictions to economic activity of individual types of commercial organizations formed in the form of economic partnerships - banks, insurance companies, joint enterprises and others - are regulated by special legislative acts as well as the Edict. In the case of contradiction of the

provisions of legislative acts regulating the activity of individual types of economic partnerships with the norms of the present Decree, the provisions of special legislative acts apply.

Foreign Investment Law

The Law of the Republic of Kazakstan on Foreign Investments was adopted on December 30, 1994. It establishes not only the basic legal and economic foundations for attracting foreign investments to Kazakstan, but determines the organizational forms for the effectuation thereof. Article 14 provides that Enterprises with foreign participation may be created in the form of an economic partnership, joint-stock society, and also in other forms which are not contrary to the legislation of the Republic Kazakstan.

Article 20 of the Foreign Investment Law recognizes a form of branch office and representation office of a foreign legal entity which are to registered in the agencies responsible for the State registration of enterprises with foreign participation .

The Forms of Business Partnerships in Kazakstan

THE FULL (GENERAL) PARTNERSHIP

Under section 2 of the Edict, the first of the types of economic partnerships recognized under the edict is the full partnerships. This is similar to the US general partnership. A full partnership is an economic partnership whose participants bear joint-and-several liability for its obligations with all property belonging to them should the property of the full partnership prove insufficient.

The concept of full partnership has its origins in the Roman law of socictas. In many of the civil law systems partnerships have developed juridical personality existing together with simple partnerships that do not. The full partnership was given juridical status when it appeared during the years of perestroika in the legislation of the former republics. In accordance with Soviet doctrine, juridical persons were traditionally seen as having the following characteristics: organizational structure and management organs; separated property; autonomous property responsibility and the ability to act in its own name.

Furthermore, juridical personality is primarily used to create an association independent from the founders that continues to exist despite any change or death of the participants. And yet in the case of a full partnership it is the identity of the participants that is crucial (thus

provisions relating to transfer of participants' interests are detailed and restrictive). Personal participation is considered so important that, on the death of a participant, the Edict provides for the dissolution of the partnership itself. For similar reasons, the legislation of the former republics often provides that a participant can be expelled from a partnership by a unanimous vote of the other participants.

Participants in a full partnership have the right to participate in management of the full partnership; receive full information on the activity of the full partnership, including reading the accounting and other documentation of the partnership; to receive profit from the activity of the full partnership irrespective of the size of their share in the partnership's property, if not otherwise stipulated by the founding documents; leave the full partnership in the established procedure; receive, in the case of liquidation of the full partnership, the part of its property corresponding to their share in the property of the partnership which is left after settlements with creditors, or its value.

Participants in a full partnership must: adhere to the founding documents of the full partnership; participate in the activity of the full partnership in the procedure stipulated by the founding documents make contributions in the procedure, method and amount stipulated by the founding documents of the full partnership; and refrain from doing deals in their name and interests which are of the same kind as those which are the subject of the partnership's activity; and not divulge information which has been announced by the full partnership to be a commercial secret.

Participants in a full partnership form a charter fund, the size of which must be no less than 25 times the amount of the minimum monthly wage established by legislation in the Republic of Kazakstan at the moment the participants make their contributions into the charter fund. The amount, procedure and times for formation of the charter fund of a full partnership are determined by the founding documents of the partnership.

The superior organ of a full partnership is the general assembly of participants. Adoption of a decision on internal issues of a full partnership is done at the general agreement of all participants. The founding documents of the

partnership may stipulate cases where a decision is made by the majority vote of the participants. Each participant of the full partnership has one vote, if the founding documents do not stipulate another procedure for determining the number of votes of its participants.

The management of a full partnership is carried out by executive organs of the full partnership. The types and the procedure for formation of organs of management and their competencies are determined by the participants in the founding documents.

In the case of a participant leaving the partnership, his being declared bankrupt or the application of a creditor (creditors) for the execution on his share in the property of the partnership, the death of a participant in the full partnership, the announcement of his death, the acknowledgment of him as absent without news or as incapable or of restricted capability, the full partnership is subject to termination, if not otherwise stipulated by the founding documents or not established by agreement of the remaining participants.

In the case of the full partnership continuing its activity, and also in cases of transfer of a participant's share in the partnership's property to other participants or third parties, the exclusion of a participant from the partnership or the acceptance of new participants into the partnership, the full partnership is subject to reregistration with entry of the appropriate amendments into the foundation documents.

A participant in a full partnership has the right to leave it, having announced the renunciation from further participation in the partnership. The renunciation of participation in a full partnership must be announced by the participant no less than six months before actual exit from the partnership. This provision, like many in the Edict, are unduly restrictive, especially in a formative market, economy as in Kazakstan.

The early renunciation of participation in a full partnership that was founded for a specified period for up to five years is only allowed only on the basis of good cause. This again is much too restrictive. However, the founding documents of a full partnership may stipulate another deadline for participants

announcing their exit from the partnership than mandated by the Edict. An agreement in advance among the participants of the partnership to renounce the right to leave the partnership is invalid.

Accepting new participants is only possible with the agreement of all participants of the full partnership With the acceptance of new participants, changes are entered into the founding documents of the full partnership, concerning: the new size of the shares of the participants in the partnership; the procedure for management of the partnership; the size, procedure, times and methods for the new partnership participant's payment of his contribution; and other changes necessary in connection with the acceptance of a new participant.

The profit and losses of a full partnership are distributed between the participants proportionally to the size of their contributions into the charter fund of the partnership, if not otherwise stipulated by the founding contract or agreement of the participants. This at least allows the participants to value the efforts as well as the capital contributions of participants in determining the participation in the profits of the partnership. An agreement eliminating any of the participants of the full partnership from participation in the distribution of profit and covering losses is invalid.

If upon liquidation of a full partnership it turns out that the existing property is insufficient for covering all its debts, its participants bear for the insufficient part joint-and-several liability for the partnership with all their property from which, in accordance with legislative acts, are subject to levy and execution. This is similar to general partner treatment under the US Uniform Partnership Act.

A participant in a full partnership who entered the partnership after its founding by the procedure of transfer of a share or by legal succession answers equally with the other participants also for obligations which arose before their entry into the partnership. This is contrary to the Uniform Partnership Act treatment for general partnerships.

A participant in a full partnership who entered it after its founding by tbe procedure of adoption of a new participant answers only for obligations that arose

after his entry into the partnership. This is the same treatment under the Uniform Partnership Act.

A participant who left a full partnership on his own initiative, at the decision of their guardian in the case of declaration of them as absent without news or incompetent, or with the agreement of their trustee if they had been declared to be of restricted competence, or excluded from the partnership by court decision, and also the legal successor (heir) of a deceased or announced deceased participant who refused the proposal to enter the partnership, answer for obligations of the partnership which arose before the moment of their exit, for a period of two years from the day of confirmation of the report on the activity of the partnership for the year in which they left the partnership. This provision is commercially unreasonable.

In the case of termination of the full partnership, the participants bear liability for the obligations of the partnership which arose before the moment of its termination, for a period of two years from the date of termination of the partnership. An agreement of the participants changing the procedure of their liability for obligations of the full partnership stipulated by the present article is invalid.

A full partnership, is terminated if there is only one participant left in the partnership. A participant in a full partnership, for six months from the moment when he became the only participant in the partnership, has the right to accept new participants and keep the full partnership. A participant, for six months from the moment when he became the only participant in the partnership, has the right to conclude a contract with investors for financing the activity carried out by the partnership and form a Kommandit partnership; or to found an additional liability partnership, a limited liability partnership or a joint-stock company, adhering to the requirements of the present Decree on the minimum size of the charter fund for the appropriate type of partnership, or liquidate the partnership.

The firm name of a general partnership must reflect the status of the enterprise either as a general partnership or as a limited partnership. The contributions of a partner to the capital fund of the partnership may be in the form of money (cash), securities, other property

including property rights with a determinate monetary value. Such contributions, however, may not be in the form of personal services.

Kommandit (Limited) Partnership

The next partnership form described in Kazakstan is the Kommandit Partnership. It is closest in form to the US limited partnership with a mixture of general and limited partners. The origin of such partnerships is unclear, but some scholars assert that it first arose in medieval Europe where the nobility (for whom active participation in trade was prohibited or socially unacceptable) advanced funds to merchant traders. Such nobles would not participate in the running of the business but would have a right to receive a share of the profits, and would have no liability beyond the amount of their contribution.

The kommandit partnership in Kazakstan traces its origins to that of Prc-Revolutionary Russian law and other civil law systems. There are two classes of Participants: active (or full) participants who are involved in the same way as participants of the full Partnership; and investor participants who contribute property, but not personal skills, with no right to be involved in the enterprise management, but with a right to a share of the profits, and with liability limited to their property contribution.

A Kommandit partnership is an economic partnership which includes, along with one or more participants who bear joint-and-several additional liability for the obligations of the partnership with all their property (full partners), also one or more participants whose liability is limited to the sum of their contribution into the charter fund of the partnership (investors) who do not take part in executing the partnership's entrepreneurial activity. The legal position of full partners taking part in a Kommandit partnership and their liability for the obligations of the partnership are determined by the rules on participants in a full partnership.

The norms of the Edict on full partnerships generally apply to a Kommandit partnership to the extent they are not contradictory. The investors in a Kommandit partnership have the right: to receive a part of the profit of the partnership proportional to their share in the property and the charter fund in the procedure stipulated by the founding documents; to read the annual reports and balance-sheets of the partnership and also demand the guarantee of the possibility of checking the correctness of their content; to transfer their share in

the property, or a part of it, to another investor or third party in the procedure stipulated by the Edict and the founding documents; and to leave the partnership in the procedure stipulated law and the founding documents.

The investors in a Kommandit partnership must adhere to the terms of the founding documents of the partnership; make contributions in the procedure, method and amount stipulated in the founding documents of the partnership; in cases indicated in the founding documents of the partnership, give the partnership assistance in executing its activity, including giving services to the partnership.

The charter fund of a Kommandit partnership consists of the contributions of full partners and investors and must be no less than 100 times the minimum monthly wage as established by legislation in the Republic of Kazakstan at the moment of the participants making their contributions into the charter fund.

The total amount of the shares of investors in the charter fund may not be more than 50 percent. Furthermore, in the founding documents of the Kommandit partnership the obligation of the investor to pay contributions (parts of contributions) of full partners may be stipulated. The amount, procedure and times for formation of the charter fund of a Kommandit partnership are determined by the founding documents of the partnership.

The procedure of management and running business of the Kommandit partnership by its full partners is established by them according to the rules on full partnerships. Investors do not have the right to participate in the management of affairs of the Kommandit partnership, or also to act in its name in any other way than by power of attorney. Investors in a Kommandit partnership do not have the right to dispute the acts of full partners in the management of the affairs of the partnership.

The transfer by an investor of his share in the property of a Kommandit partnership to other investors, full partners or third parties is only possible with the agreement of all full partners, if not otherwise stipulated by the founding documents. With the transfer of a share to other investors, a full partner or third

parties, the simultaneous transfer of all the rights and obligations belonging to the investor that has left the Kommandit partnership takes place.

An investor in a Kommandit partnership, at the end of the financial year has the right to leave the Partnership, by announcing his renunciation of participation to the partnership. Renunciation must be announced by the investor no less than 6 months before the end of the financial year, if not otherwise stipulated by the founding documents.

If any participant, either full partner or investor, leaves a Kommandit partnership, the shares of the remaining participants in the property of the partnership increase proportionally to their original amount established on the day of the participant from the partnership, if not otherwise stipulated by the founding documents or agreement of the participants.

Limited Responsibility Partnership

The limited liability partnership is a partnership in which the liability of the partners is limited to their contributions to the capital fund of the partnership. Unlike the limited (Kommandit) partnership, there are no general partners in a limited responsibility partnership, all participants are limited partners. If a partner in a limited liability partnership has not yet made his full contribution to the capital fund, he is still liable for the partnership obligations to the full extent of his agreed contribution, including the unpaid portion of his share.

The introduction of a limited responsibility society in addition to the joint-stock society came about during perestroika with the adoption of the USSR Joint-stock Societies Statute. This same business form has appeared in the legislation of the former Soviet republics under two labels: the limited responsibility society and the limited responsibility partnership.

The partnership with limited liability is a partnership established by one or several persons the charter fund whereof is divided into shares of the size which is stipulated in the foundation documents. The participants of a limited liability partnership shall not be responsible upon its obligations and they shall bear the risk of losses associated, with the activities of the partnership within the limits of their contributions.

The number of participants of the limited liability partnership must not exceed thirty. In any other cases it shall be subject to transformation to a joint stock society within one year and

upon expiration of that term liquidation in traditional procedure where the number of its participants is not reduced down to thirty. A limited liability partnership may not have as a sole participant another business partnership which consists of one person.

A participant of a limited liability partnership shall have the right at any time to exit the partnership to leave the partnership irrespective of the consent of its other participants. In that respect he must be paid the value of the assets proportional to his share in the charter fund of the partnership in accordance with the procedure the methods and within the deadlines stipulated in the legislative acts and the foundation documents.

The participants in a limited liability partnership which have not fully paid their contributions into the charter fund bear joint-and-several property liability for the obligations of the partnership within the limits of the value of the part of the charter fund that has not been paid in. The number of participants in a limited liability partnership must not exceed thirty. A partnership with limited liability may not have as the only participant another economic partnership consisting of one person.

Participants in a limited liability partnership form the charter fund, the size of which must be no less than one thousand times the minimum monthly wage established by legislation in the Republic of Kazakstan at the moment of the participants making their contributions into the charter fund. The charter fund of a limited liability partnership must be paid by participants in the amount of at least 25% of its size as announced in the founding documents by the moment of the partnership's registration. Changes (increases or decreases) in the charter fund of a limited liability partnership may be carried out only after all the participants have made their contributions into the charter fund.

The highest management body of the limited liability partnership is the general assembly of its participants. In a partnership with limited liability an executive organ is formed (collegial or of one individual) which carries out the day-to-day direction of its activity and is accountable to the general assembly of its participants. The organs of management of the society may not be elected from its participants.

Participants in a limited liability partnership have the nght at any time to leave the partnership, irrespective of the agreement of the other participants. Renunciation of participation in the partnership must be announced by a participant no less than six months before actual exit from the partnership. The founding documents of a limited liability partnership may stipulate another period for a participant's submitting the announcement of exit from the partnership.

Participants in a limited liability partnership enjoy the priority right of purchase of a participant's share (part) proportional to the size of their shares in the property of the partnership, if the charter of the partnership or an agreement of its participants does not stipulate another procedure for the realization of this right. If participants in a limited liability partnership do not use their priority right, the participant has the right to cede his share to any third party.

If, in accordance with the charter, the alienation of the share of a participant (their part) in the limited liability partnership's property to third parties is not allowed, and other participants in the partnership have refused to buy it, the partnership must pay the participant its actual value or give him property in kind corresponding to such a value.

In the case of acquisition of a participant's share (part) by the limited liability partnership itself, it must sell it to other participants or third parties within the times and in the procedure stipulated by the partnership's founding documents, or reduce its charter fund. Over the duration of this period, the distribution of profit and also voting in the superior organ is done without taking account of the share acquired by the partnership.

The exclusion of a participant from a limited liability partnership is done by the application of the partnership's organ by judicial proceedings on the foundation of a decision of the general assembly of participants taken unanimously. Furthermore the participant who is being excluded does not participate in the voting.

A participant may leave a limited liability partnership at any time, without the agreement of the others. When a participant leaves a limited liability

partnership, the shares of the remaining participants increases proportionally to their original sizes, established on the day of exit of the participant from the partnership, if not otherwise stipulated by the founding documents or by agreement of the partnership's participants. The acceptance of third parties as new participants in a limited liability partnership is possible only with the agreement of all the partnership's participants, if not otherwise stipulated by the founding documents of the partnership.

If the number of participants in a limited liability partnership exceeds thirty, then it is subject to conversion into a joint-stock company within a year, and at the expiration of this period - to liquidation through court proceedings at the application of the registering organ or other interested parties, if the number of participants does not reduce to thirty. A limited liability partnership may be converted only into a joint-stock company

In cases where the size of the charter fund reduces to less than the minimum amount stipulated by law, and also if the participants do not form the charter fund of the partnership within the deadlines established by law, then the participants must, within a year, make additional property contributions into the charter fund. Otherwise the partnership is subject to liquidation by court ruling at the application of interested parties. To the extent that the partners in a limited liability partnership enjoy limited liability, this enterprise form is very similar to the joint stock corn pany. The basic difference between a limited liability partnership and a joint stock company is that in the limited liability partnership the capital fund is divided into a share (*dolya*), while the capital fund of a joint stock company is divided into stocks *(aktsii)* . Unlike a joint stock company, the limited liability partnership may not issue stocks and is also not subject to securities regulation. If a limited liability partnership wishes to issue stocks, it must first reorganize into a joint stock company. It is thus not surprising that the Russian law "On enterprises", adopted during perestroika, in article 11, refers to the "limited responsibility partnership ('joint-stock society of the closed type)".

ADDITIONAL RESPONSIBILITY PARTNERSHIP

This corporate form was initially introduced by the legislation of the union republics of the former Soviet Union and was subsequently adopted at an all-union level in the FPCivL. It

also appears in the former republics under two labels: the additional responsibility society and the additional responsibility partnership.

The additional responsibility society/partnership ("TDO") differs from the Limited Responsibility Partnership ("TOO") in one respect. As with the TOO, all participants contribute amounts to the charter fund and are liable up to the amount of their contributions. However, in the TDO, in the event that those contributions are insufficient to pay the debts of the TDO, each participant is liable for an additional amount which is specified in the constitutive documents as a multiple of their actual contribution.

The only real benefit of such an arrangement is that the participants have the use of part of their contribution (the additional responsibility) until such time as the TDO enters insolvency proceedings. It should be noted that the concept of "additional responsibility" appears in very few other civil or common law countries.

An additional liability partnership is an economic partnership, the participants in which answer for the obligations of the partnership within the limits of the contributions made by them into the charter fund of the partnership, and if these sums are insufficient, with additional property belonging to them in the amount of a multiple of the payments made by them into the charter fund of the partnership.

An additional liability partnership is founded where the size of the charter fund formed by the partnership's participants is no less than fifty percent of the minimum size for a charter fund established for limited liability partnerships. The additional liability of the participants in an additional liability partnership may not be less than twice their contributions into the partnership's charter fund. The limit amount of liability of participants in an additional liability partnership is stipulated in the founding documents of the partnership.

If there is insufficient property, and also one of the participants in an additional liability partnership is bankrupt for example, his additional liability for the obligations of the partnership is distributed amongst the participants proportionally to their shares in the partnership's property, if another procedure is not stipulated by the founding documents.

For the obligations of the enterprise, a partner in an unlimited liability partnership may be held liable beyond the amount of his contributions to the capital fund of the partnership. But, the amount of his liability beyond his contribution to the capital fund of the enterprise shall be directly proportionate to his contributions to the capital fund of the enterprise.

THE KAZAK JOINT STOCK COMPANY

A joint-stock company is a partnership whose charter fund is divided into a specific number of shares of equal nominal value. The participants in the company (shareholders) do not answer for its obligations and bear the risk of losses connected with the activity of the company, within the limits of the value of the shares belonging to them. A joint stock company may be established by just one individual (i. e., a wholly owned company) in which all the stocks belong to one person.

The company owns the property isolated from the property of its participants, bears liability for its obligations within the limits of its property, and does not answer for the obligations of its participants. The founders bear joint-and-several liability for the obligations of the company in the case of incomplete payment of contributions into the charter fund of the company, within the limits of the unpaid part of the contribution.

The company may be created by one person or consist of one person in the case of one shareholder buying all the company's shares. The company may not have as the single participant another economic partnership consisting of one person. A joint-stock company whose participants may alienate shares belonging to them without the agreement, of other share-holders is an open joint-stock company. An open joint-stock company has the right to carry out open subscription to the shares issued by it and their free sale on the terms established by legislation.

The number and membership of shareholders of an open joint-stock company is not restricted. An open company must annually publish for general information a yearly report, accounts balance-sheet and a profit and loss account. A company, and also its officials, bear liability established by legislation for the reliability of information contained in the published information.

A company whose shares are distributed only amongst its founders or other previously determined circle of people is a closed company. Such a company does not have the right to carry out open subscription to shares issued by it or in another way put them up for acquisition by an unrestricted circle of people.

The number of shareholders of a closed company owning its common (voting) shares may not exceed fifty. If the number of such shareholders of a closed company exceeds the indicated limits, the general assembly of the company's shareholders must, within six months of this moment, decide to convert the company into an open one, make the appropriate changes to its founding documents, and ensure its registration. Upon the expiration of the indicated deadline the company is subject to liquidation at the application of interested parties if such a decision has not been made and the number of owners of ordinary shares of the company does not decrease to the indicated limit.

A shareholder in a closed company wishing to sell shares must suggest that another participant in the company or the company himself buy him out, if not otherwise stipulated by the founding documents. If the participants in the company have refused to acquire the shares, then the shareholder has the right with the agreement of the company, or if he does not receive an answer within a month of asking, to sell the shares to third parties.

The founding documents may stipulate the possibility of excluding from the closed joint-stock company through court ruling a participant who has essentially breached with his actions the interests of the company. The shares of an excluded participant are forcibly bought by the company.

A closed company is not obligated to publish for general information an annual report, accounts balance or profit and loss account, if not otherwise stipulated by its founding documents. The validity of a founding contract on the creation **of an open company terminates from the moment of full payment of** the charter fund of the company announced at its founding, if not otherwise **stipulated by legislation.**

The charter fund of a joint-stock company is made up of the contributions of shareholders paid as a result of their acquisition of the company's shares. The

charter fund of a company determines the minimal amount of the company's property guaranteeing the interests of its creditors. It is equivalent to the sum of nominal value of the shares issued by the company and may not be for open companies less than five thousand times the minimum monthly wage legislatively established in the Republic of Kazakstan at the moment of the shareholders paying their contributions into the charter fund.

The charter fund of the company must be paid by its shareholders to fifty percent of the charter fund size announced in the founding documents by the moment of its registration. The unpaid part of the charter fund as announced in the founding documents must be paid over the duration of one year from the day of the company's registration. If the participant (participants) does not pay his part of the contribution into the charter fund over the duration of a year he must pay the company interest on the sum of the unpaid part.

Open subscription to the company's shares is not allowed until the full payment of the charter fund. When the company is founded, all its shares must be distributed amongst the founders. The freeing of a shareholder from the obligation of paying for shares, including by means of offset of demands to the joint-stock company, is not allowed. If at the end of the second and each subsequent financial year the value of net assets of the company is less than the charter fund, the company must announce and register in the established procedure the decrease of its charter fund. If the value of the indicated assets of the company becomes less than the legal minimum, the company is subject to liquidation.

A joint-stock company has the right, at the decision of its general assembly of shareholders, to increase the charter fund by means of increasing the nominal value of the shares or the issue of new shares. Increasing the company's charter fund is allowed only after its full payment. The increase in the charter fund of the company for covering losses suffered by it is not allowed. Both of these provisions operate as severe restrictions on the flexibility to raise capital often needed by newly formed or rapidly growing companies.

Changes in the charter caused by the issue of additional shares must be registered. The additional issue of shares before registration of changes to the charter is forbidden. Legislation for individual types of organization (banks, financial and insurance organizations and others) that are joint-stock companies may stipulate another procedure for increasing the charter fund than the one indicated in the present article.

Founders of a joint-stock company conclude between themselves a contract on its creation, determining the procedure for carrying out their joint activity to form the company. The founders of a company bear joint-and-several liability for the obligations arising before the registration of the company. The company bears liability for the obligations of the founders connected with its formation only if there is subsequent approval of their actions by the general assembly of shareholders.

The company may issue registered shares and bearer shares, if not otherwise stipulated by legislation on securities. The movement of reg-istered shares is recorded in the shareholders' register, which is kept by the company or another legal entity (depository). In it must be entered information on every registered share, times of share acquisition, and also the number of such shares with each of the shareholders with indication of their requisites (location and clearing account for legal entity shareholders, passport details and place of residence for physical person shareholders).

In the register of shareholders they may be other information stipulated by legislation on securities (including information on persons keeping shares and doing transactions with them in the interests of shareholders). Information on personal shares acquired by the issuing company is subject to compulsory entry into the register of shareholders.

Companies that have more than five hundred registered shareholders must instruct the indicated organizations (independent registerers) to keep the register of shareholders. At the demand of shareholders and mortgage holders the management must present free of cost to them excerpts from the register of shareholders in relation to their rights to shares. The management must keep the

register of shareholders in the place of location of the legal entity of the joint stock company or (and) another legal entity (depository) to provide the possibility of shareholders and mortgage holders to read it. Information on shares not paid in full must be available to the public.

In the company's charter, apart from ordinary shares, the issue of preference shares may be stipulated giving the shareholder the right to receive a guaranteed minimum size of dividends. Owners of preference shares do not have the right to vote in the company if not otherwise stipulated by its charter. The procedure for the realization of rights of holders of preference shares, including priority in the allocation of the property of the company if it is liquidated, is determined by legislation and the charter. Preference shares may not be issued for a total exceeding 25 percent of the charter fund of the company.

. By legislation or by the charter of a closed company the restriction the number of shares and their sum nominal value or the maximum number of votes belonging to one shareholder may be stipulated. **The** conditions and procedure of issue, registration, acquisition, distribution and circulation of shares is determined by legislation on securities.

The decision of questions referred by the present Decree or the company's charter to the exclusive competency of the general assembly of shareholders may not be entrusted to the executive organs of the company. The company has a general assembly of shareholders once a year, irrespective of other assemblies. No more than **15** months may pass between general annual assemblies.

All meetings, apart from the annual one, are extraordinary. Extraordinary meetings are called by the company's board, the auditing commission or shareholders having no less than 20 percent of the shares. The owners of shares are informed personally about the forthcoming calling of a general meeting by a registered **letter to the address given in the shareholders' register. Notification** about an extraordinary meeting must contain the formulation of the question brought forward **for** discussion.

In the times between shareholders' meetings the board directs all activity of the joint stock company within the limits of the competencies given it in the

charter. In the competencies of the executive organ of a joint stock company are the decision of all questions which are not in the exclusive competence of other organs of management of the company as stipulated by legislation or the charter.

Members of the company board must be appointed originally by the founding contract, and then elected at the general assembly of shareholders if the members of the board are not appointed by the supervisory council in accordance with the provisions of the charter. The company charter must contain provisions on the procedure of management of the company in cases where one or more members of the board are absent or for other reasons may not fulfill the functions they have been given. If not otherwise stipulated by the company charter, the conditions of wage payment for members of the board is established by the supervisory cou ncil of the company.

Members of the board may be shareholders and employees of the company who are not shareholders. The logic for excluding employee shareholders from the boar is certainly not apparent. The competence of the board and the procedure for their acting in the name of the company is determined by the charter. Annually, twenty days before the date of the assembly of shareholders, the board must prepare the annual report, balance sheet, profit and loss account and ensure the availability of these materials for the shareholders' perusal.

In a joint stock company, there must be created a supervisory council both from amongst the shareholders, including the founders, and from other invited specialist experts. The supervisory council effects control over the activity ofthe board, gives permission for the conclusion of specially important commercial contracts, mortgage contracts, guarantees and performs other functions stipulated by the company charter.

Members of the supervisory council do not have the right to act in the name **of the company. In the company charter, the exclusive competence of the** supervisory council should be determined. Questions referred by the charter to the exclusive competence of the supervisory council may not be handed over by it for the decision of the executive organs.

Officials of a joint stock company are members of the board, members of the auditing commission and members of the supervisory council. The procedure for appointment and discharge of officials, and also citizens who may not be appointed as officials are determined by legislation and the company charter.

Officials of the company carry out their official functions in the interests of the company. If an official of the company has a financial interest in a deal which the company is concluding, he must inform the board and the supervisory cou ncil about this in writing and receive written permission to complete the deal correspondingly from the board and the supervisory council. Officials of the company must not use or allow the use of property and the property rights of the company for other purposes than those determined by the general assembly or the supervisory council. Officials of the company, over the period of their activity, must restrain from founding or participating in any way in activity representing competition to the company, except cases where such competition was directly permitted in writing by the majority of non intcrcstcd members of the supervisory council or non-interested shareholders who make up more than half the charter fund of the company.

In the case of forced liquidation of the company, officials bear property liability towards creditors for the company's obligations if there is insufficient company property for payment of its obligations, if the officials are guilty of gross neglect in fulfillment of their obligations or in their non-fulfillment, and if the indicated fulfillment or non-fulfillment by them of their responsibilities directly led to the forced liquidation of the company. A company official does not bear liability in accordance with the provisions of the present point if he proves that he took reasonable measures to prevent such liquidation, even if the measures taken by him did not get a result.

If the annual report, balance sheet and profit and loss account or the interval financial report significantly pervert the financial situation of the company, the officials of the company that signed the named documents bear subsidiary liability towards third parties who as a result of this suffered material damage.

A joint stock company does not have the right to pay dividends before the full payment of its entire charter fund, or if the size of the charter fund will become less as a result of the payment of dividends. A dividend may be paid in shares (capitalization of profit), bonds and goods if this is stipulated by the charter of the company. An open joint stock company must create a reserve fund in the amount of no less than 10 percent of the charter fund. The procedure for formation and use of the reserve fund is determined by the charter. The amount put into the reserve fund is established by the assembly of shareholders.

The joint-stock society is defined as an association created on the basis of an agreement between two or more persons who have combined their assets for the purposes of carrying out commercial activity. Each has a charter fund divided into a specific number of stocks of various classes. These are held by its stockholders who comprise the general meeting. In the joint-stock society there is a separation between ownership (by the stockholders) and management of its activities (by their appointees). As a result, the various powers of the internal organs of these societies are of importance.

Traditionally there are two models for the internal management structure of the joint-stock society. They cannot be mixed in one corporate, vehicle. This first is where the stockholders at a general meeting elect a council of director to run the company. Such a model is used in most civil and common law countries. The council of directors not only supervises the running of company, but is also involved in the day-to-day management (although sometimes delegated to the chairman and executive officers). The second model, a feature of German company law, envisages the election of a board and a supervisory council. This form has been adopted in other civil law countries. The board is involved in management, whereas the supervisory council (comprising exclusively of stockholders) controls the activities of the board. The members of the board and the supervisory council must be different. Unfortunately both models have been borrowed, confused and combined in the provisions of the legislation of the former republics governing joint-stock societies, where all three organs, the council of directors, the board and the supervisory council, can potentially exist together in one society. Thus, as a practical matter, there is sometimes no sensible legal framework within which to create the internal management organs of the joint-stock society in the former republics.

The joint-stock society of the open type is the traditional and flexible means by which capital can be combined for commercial activity. Personal participation of the owners (i.e.

stockholders) in the management is unintended. As a result, stocks arc freely transferable (as the identity of a participant is unimportant as long as he has the capital to invest) and the society operates on the basis of a charter (rather than, as in a full partnership, by a constitutive contract). For these reasons it is unclear as to why, there was a requirement that throughout the life of a joint-stock society, there need be two participants. From a practical point of view, transactions, in which one person buys all the stocks and then soon after, sells a portion of them, were questionable due to the two participants rule. In addition, during privatization, the State Property Committee of the former republics normally de facto holds all the stocks before sale into private hands. For these reasons the introduction of single participant joint-stock societies by the provisions of the new civil codes of some the former republics was necessary.

OTHER FORMS OF KAZAK BUSINESS ENTITIES

Subsidiary Partnership and Dependent Company

Article 94 of the new Civil Code defines a subsidiary company as one in which the parent company owns a majority (i. e., at least 5 1 percent of the shares or where the other (the main business partnership) by virtue of the predominant participation in its Charter fund or in accordance with the agreement concluded between them or in any other way has the capacity to determine the decisions which arc adopted by such partnership.

The key to the parent company - subsidiary partnership relationship is that the former has a controlling voice in the decisions of the latter. The subsidiary business partnership shall not be a reliable for the debts of its main business partnership. The main business partnership which in accordance with the agreement with the subsidiary business partnership has the right to give to the latter the indications which are compulsory for it shall be subsidiary reliable with the subsidiary business partnership in respect of the transactions concluded by the latter to execute such indications.

In the case of the insolvency (bankruptcy) over subsidiary business partnership caused by the fault of the main business, the latter shall be the subsidiary responsibility in respect of its debts. This is similar to language in Russian law and its meaning has been the subject of considerable debate in the professional community in Russia as to its meaning and effect.

Dependent Company

A joint stock society shall be recognized as related where the other (participating) or dominating legal entity as more than 20% of its voting shares. The (predomination)

predominating (participating) legal entity must immediately publish the information concerning the acquisition by it of the appropriate amount of shares of the related joint stock society in accordance with the procedure stipulated in the legislative acts.

The mutual participation of joint stock society in the Charter funds of each other may not exceed 25% of each in the Charter fund unless otherwise is stipulated in the legislative acts. The joint stock society which mutually participate in the charter fund of each other may not use more than 25% of the votes at are the General meeting of the shareholders or the other society.

Representation Office of a Kazakstan Legal Entity

Article 43 of the new Civil Code defines a representation office as an operational unit of a legal entity which is located outside of the domicile of the parent company and whose primary purpose is to represent as well as protect the interests of the parent company. A representation office is not a legal person and cannot be endowed with the attributes of a legal person by its parent company. A representation office may not engage in any commercial transactions either in its own name or its parent company. Put quite simply, its function is to serve as the eyes and ears of the parent company: it monitors economic trends in the place where it is located and reports its findings to the parent company; it serves notices on third parties as well as receives services of notices from third parties on behalf of its parent company , The manager (or general manager) of a representation office is appointed by the parent company and his powers are stipulated in a power of attorney furnished to him by the parent company.

Affiliates

Article 43(1) of the Code A separate subdivision of a legal entity which is located outside the place of its location and which carries out all or part of its functions including the function of representation shall be an affiliate.

Representation shall be a separate subdivision of the legal entity which is located outside the place of its location, which carries out the protection and representation of the interest of the legal entity and which commits on its behalf deals and any other legal actions.

Affiliate representation shall not be a legal entity, they shall bc imparted with the pro perty of the legal entity which created them and they shall operate on the basis of the regulations approved by it. The managers of the affiliate representation shall be appointed by the legal entity and they shall operate on the basis of its power of attorney.

Branch Office

A branch office, like a representation office, is not a legal person. It may, however, engage in commercial transactions, but must do so in the name and on behalf of the parent company. The powers of a branch office are more extensive than those of a representation office . By its nature, a branch office may also perform the functions of a representation office. The manager (or general manager) of a branch office is also appointed by the parent company which must also spell out the scope of the authority of the branch office in a power of attorney to be furnished to the manager of the branch office.

One illustration of the difference between a representation office and a branch office is that, for example, the representation office of an insurance company can only give out and / or receive applications for an insurance policy on behalf of the parent company. But, a branch office can additionally write insurance policy on behalf and in the name of the parent company.

A foreign company may establish a representation office or a branch office in Kazakstan. but does so with the clear understanding that such an operational unit is not a legal person under Kazakstan law and may not engage in commercial transactions in the territory of Kazakstan. if a foreign company wishes to establish its branch office in Kazakstan and intends to endow such office with the attributes of a legal person, its only option under the new Kazakstan law is to establish one of the new legal entities recognized under Kazakstan law. Typically, the choice would be a joint stock company of the closed **type.**

Branch Office and Representation Office of a Foreign Legal Entity

Article 19 of the 1994 Law " On Foreign Investment " authorizes foreign legal entities to form branch offices as well as representation offices in Kazakstan. The difference bctwccn this Article 19 branch offices and representation offices and their counterparts under Article 43 of the Civil Code is that the latter arc instrumentalities of Kazakstan legal entities, whereas the former are organs of foreign legal entities. Whereas an Article 43 (of the Civil Code) representation office is registered with the organs of local administration, an Article 19 (of the I .aw " **On Foreign Investment representation** office **is registered with** the **Ministry of** Commerce and Industry. Whereas an Article 43 branch office is registered with the organs of local administration, an Articlc 19 branch officc is rcgistcrcd with thc Nntionnl Agency for Forcign Investment (NAFI).

Because the Kazakstan branch office of a foreign legal entity is not a legal entity, it may not engage in commercial activities in the territory of Kazakstan. The Kazakstan branch office of a foreign legal entity may, however, combine the functions of a representation office.

Production Cooperatives

A production cooperative is a voluntary association of individuals who wish to engage in a common commercial enterprise. Members of such a cooperative arc subject to unlimited liability for the obligations of the enterprise. The capital fund of a production cooperative is divided into stocks which are distributed among its founding members. Stocks of a production cooperative may not be publicly traded or sold to third parties. To some extent this form of enterprise organization resembles a joint stock company of the closed type (**in** the sense that its stocks are distributed only to the founding members and may not be publicly traded). In another sense, it resembles the unlimited liability partnership (in the sense that its members are liable for the obligations of the enterprise beyond their contributions to the capital fund of the enterprise). A production cooperative shall have its own charter.

A voluntary association of citizens on the basis of the membership for joint entrepreneurial activities which is based on personal labor participation and association by the members of their property contributions (shares) shall be recognized as productive cooperatives. Members of a cooperative must be not less than 2.

Members of a productive cooperative shall bear in respect of the obligations of the cooperative an additional (subsidiary) liability in **the** amounts in accordance with the procedure stipulated by the law concerning productive coopcrativcs.

The charter of a productive cooperative must contain apart from the information indicated in paragraph 4 of Article 41 of this Code the conditions concerning the amounts of shares of the cooperatives members concerning the composition on the procedure for contributing shares by the members of the productive cooperative and their liability for the violation of the obligations in rospoct of marking the contribution of the share, concerning the nature and the procedure of the labor participation of its members in the activities of the cooperative and **their** responsibility for violating the obligations in respect of the personal labor participation concerning the procedure for the distribution of profits and lasses of the cooperative, concerning the composition and the authority of the governing body of a cooperative and the procedure for the

adoption by them of the decisions including amongst those concerning the issues the resolution in respect whereof are to be adopted unanimously or by a qualified majority of votes.

The profits of cooperative shall be spread amongst its members in accordance with its labor participation unless another procedure stipulated in the Charter of the Cooperative. The Supreme body of managing a productive cooperative shall be General meeting of its members. In the productive cooperative there may be created a supervisory council which exercises the control activities of the executive bodies of the cooperative. The members of the supervisory council shall not have the right to act on behalf of a productive coopcrativc. A member of a cooperative may not be at same time the member of the supervisory council and the member of the board.

The member of a cooperative shall have one vote when a decision is adopted by the General meeting. A member of a productive cooperative shall have the right at their discretion to leave the cooperative. In that case he must be paid or issued his share and also other benefits must be made which are stipulated in the Charter. The issue of the share or any other assets to the cooperative member who is leaving the cooperative **shall** he carried nut upon **the** expiring of the financial year and the approving of the counting balance sheet of the cooperative.

A member of a productive cooperative may be excluded from the cooperative upon the decisions of the General meeting in the case of a failure to execute or improper execution of the duties which are delegated to in by the charter of the cooperative and also in any other cases which are stipulated in the legislative acts and the foundation documents. The exclusion from membership of a productive cooperative may be excluded from it upon the decision of the General meeting in relation to the membership in a similar cooperative.

A member of a productive cooperative who is excluded from it shall have the right to get the share and any other benefits which are stipulated in the charter of the cooperative in compliance with the paragraph 1 of this Article.

A member of a productive cooperative shall have the right to transfer his share or its part to any other cooperative member unless otherwise is stipulated in the legislative acts and the foundation documents. The transfer of a share (part thereof) to a citizen who is not a member of a productive cooperative shall only be permissible with the consent of the cooperative. In that case any other member of the cooperative shall exercise the prc-cmptive right in the purchase of such a share (its part).

State Enterprises

The state enterprise continues as a legal entity in Kazakstan. Article 102 of the Code defines a state enterprise as one which operates on the basis of property which belongs to the state or to a municipal government, but is merely transferred to the economic control or operational management of such enterprise. The capital assets of a state enterprise belong to the state. The state enterprise has the rights only of economic control or operational management; over the capital assets. The enterprise has the rights of possession and use, but not of disposition. Without the consent of the owner of its capital assets, a state or municipal enterprise may not sell or mortgage the property- The charter of a state enterprise is adopted by the founding authorized state organization which also appoints the manager (general manager) of the enterprise.

The assets of a state enterprise shall be indivisible and they May not be distributed by contributions (shares) including among the workers of the enterprise:

the commercial name of a state enterprise or public enterprise must contain the indication of the ownership of the assets.

Non - profit Organizations

In addition to the business organization forms discussed above, there are a number on non-commercial or non-profit forms provided under Kazak Law. The following is a brif summary of them provided to give a view of all possible forms of organizations and entities in Kazakstan.

Institution

An institution under Article 105 of the Code is an organization which is created and financed the owner for carrying out administrative, social, cultural or any other functions of non-profit nature.

Public Association

Article 106 of the Code provides that a public association is a public organization which emerged as a result of a association of citizens for the purpose of achieving common interests. The participants (members) of public association shall not retain the rights to the assets which are transferred to them by those associations including the membership fees. They shall not be liable in accordance with the obligations of the public associations in which participate as their

members and the indicating associations shall not be liable for the obligations of their membership.. A public association shall operate on the basis of a charter.

The property of a public association shall be items which are necessary for the material for the financial supplies provision for the activities stipulated in its charter (statute) and also enterprises which are created the expense of its resources. The monetary resources of a public association shall be formed from the admission and membership fees, where the payment is stipulated in the charter, voluntary contributions and donations, proceeds from producing lectures, exhibitions, sport and any other events in accordance with the charter, income from productive any other business activities, other proceeds which are not prohibited by law.

Public-Foundation

A public foundation under Article 107 of the Code is a non-commercial organization which does not have any membership, which is founded by the citizens or legal entities on the base of the voluntary property contributions and which pursues social, charity, cultural, educational and any other publicly useful purposes.

A public foundation shall is a legal entity and in the Civil rights turnover it shall bc presented by the bodies of the foundation, it shall have on independent balance and the settlement account. The assets which are transferred to the public foundation by its founding parties do not retain property rights in respect of the assets of the public foundation.

The financial source of a public foundation shall be the monetary resources of the foundation parties sponsorship, voluntary, charity donations and any other legal proceeds.

The procedure for the administration of a public foundation, the procedure for the formation of its body ‘shall be determined by its charter which is approved by the foundation party. The charter of public foundation apart from the information contained in paragraph 4 of Article 4 I of this Code must contain the indications concerning the procedure for the appointment of the officials of the fund and the release, the destiny of the assets of the foundation in the case of its liquidation.

The Consumer Cooperative

A consumer cooperative under Article 108 of the Code is a voluntary association of citizens on the basis of the membership for the satisfaction of the social and economic

requirements of their member and any other citizens by way of uniting on a shared property basis of its participants.

Income received by consumer cooperative may not be distributed amongst its members. In the case of tile liquidation of a consumer cooperative or in the case of its leaving by a mem ber of a cooperative he shall have the right to appropriate his share in the assets of the consumer cooperative in proportion to his share.

Religious Association

A Religious Association is defined by Article 109 of the Code as a voluntary association of citizens who unite in accordance with legal procedures on the basis of the common interests for the satisfaction of their spiritual needs shall be recognized as religious associations.

Religious departments (centers) in accordance with the registered charters shall have the right to found spiritual, educational institutions, monasteries and any other religious associations which operate on the basis of their charters . Societies, brotherhoods, associations and any other associations of citizens which are formed for charity, study and distribution of religious literature and any other cultural and enlightenment activities may be created attached to the religious associations. They may have their own charter which shall be registered in accordance with the procedure established for the public associations.

A religious association shall have the right to create enterprises for providing for cultural activities social and charity events. Religious associations shall have the right to own the assets which are acquired or created or manufactured by it at the expense of their own resources donated by the citizens organizations or transferred by the State and acquired on any other grounds which do not contradict the legislative acts.

The participants (members) of a religious association shall not retain the rights in respect of the assets which are transferred by them to that organization including membership fee. They shall not be liable in respect of the obligations of the religious association and the religious associations shall not be liable in respect of the obligations of its members.

A Non-commercial Association

A commercial organization is formed under Article 110 of the Code for the purpose of coordinating the entrepreneurial activities and also providing the protection of common property interests may by agreement between themselves create associations in the form of

amalgamations of association (unions) which are non-commercial organizations which shall be noncommercial organizations which shall be non-commercial organizations.

Public associations and any other non-commercial organizations including the institutions may voluntary uniting to associations (unions) of those organizations. In association (union) of non-profit organizations shall be a non-profit organization.

Members of the associations shall preserve their indcpendcncc and the rights of legal entities. An association is not be liable for the obligations of its members. Mcmbcrs of the association shall bear subsidiary responsibility in respect of its obligations in the amount an d in accordance with the procedure stipulated in the foundation documents of the association.

CONCLUSION

Taken together, the Civil Code, Edict on Partnerships, and Foreign Investment Law together form the current legal basis of the forms of Kazak Business Organizations. Kazakstan provides for the largest choice of corporate vehicles among the legislation of the former Soviet Republics, including: partnerships (full partnership, kommandit partnership, partnership with limited responsibility and partnership with additional responsibility), joint-stock societies (of the closed and open type) and also companies. Unfortunately in attempting to provide for all these business forms, the Kazak Laws raise the question of the differences between all these forms and the real need for so many variants. Also important is the details of the forthcoming sole proprietorship law and the impact of the expected CIS model law on limited liability companies on the present business organizartion structure.

At this point, there are 14 forms of business enterprise organization currently recognized or possible under Kazak law. These include five non - legal entities and nine legal entities. The five non-legal entities are the individual entrepreneurship (sole proprietorship), representation office of a Kazakstan legal entity, branch office of a Kazakstan legal entity, representation office of a foreign legal entity and branch office of a foreign legal entity. The last two forms are specifically mentioned in the Foreign Investment Law but arc not fleshed out or specifically recognized as distinct forms elsewhere.

The nine legal entities are: the general partnership, Kommandit (limited) partnership, the limited liability partnership, the additional partnership, and the two forms of joint stock company, open and closed, subsidiary, dependent company, production cooperative and state enterprise.

‘1 here are many problems still remaining to be resolved with respect tothe continued development of company law in Kazakstan. Many provisions of both the Code and Edict represent significant barriers to business formation and investment in Kazakstan. There are also a number of conflicting provisions between the two laws as well as other omissions and obvious problems. These issues are outside the scope of this article but will be addressed in the current drafting of amendments to the Edict.